For all the above reasons, we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Lim Ganesh & Liu*; *Drew & Napier*.

Reported by *Ng Sheau Jiuan*

Lau Chi Sing v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) – CRIMINAL APPEAL NO 20 OF 1987
WEE CHONG JIN CJ, CHUA AND RAJAH JJ
18 NOVEMBER 1988

Criminal Law – Dangerous drugs – Trafficking of – Transporting drugs from hotel to airport – Whether this constitutes trafficking offence – Whether intended recipient of drugs must be in Singapore for offence to be made out – Misuse of Drugs Act (Cap 185, 1985 Ed), ss 2 & 5(a)

The appellant was charged and convicted of the offence of trafficking in a controlled drug under s 5(a) of the Misuse of Drugs Act (Cap 185, 1985 Ed) ('the Act'), in that he had transported the drugs from a hotel to the airport without authorization (see [1988] 1 MLJ 383). At the trial, it was not disputed that the appellant had brought the batteries (which contained the drugs) with him to Singapore and was going to bring them to Amsterdam to be delivered to some other person there, when he was arrested at the airport.

The appellant appealed against his conviction contending that in order for the offence of trafficking by transporting drugs to be made out, the intended recipient of the drugs that were being transported must be in Singapore. Counsel for the appellant relied on the Privy Council's decision in *Ong Ah Chuan* v *PP*[1] in support of this contention. The appellant also submitted that the trial court had erred in not accepting the appellant's evidence that he had thought the batteries contained diamonds.

Held, dismissing the appeal:

(1) The Privy Council in *Ong Ah Chuan*[1] had drawn a distinction between the transportation of drugs intended to be retained solely for the transporter's own consumption as contrasted with those intended to be delivered to someone else whether it be the actual consumer or a distributor or another dealer. It is only in the latter that the offence of trafficking is committed. The reference to the purpose for which drugs are being transported was a commonsensible one and was made for the sole reason that otherwise the mere act of transporting drugs would amount to the offence of trafficking under the Act even though the drugs are intended for the transporter's own purpose. Such a result would be repugnant to the ordinary meaning of the word 'traffic' and to the structure of the Act which draws a distinction between the offence of possession and that of trafficking, the latter being punishable with heavier penalties.

(2) Apart from authority, it is plain that the proposition submitted by counsel for the appellant could not have been intended by Parliament. To accept counsel's submission that one has not committed the offence of trafficking where one has transported drugs within Singapore merely because such drugs were transported with the intention of delivering them to someone else in some other country would be to declare Singapore as a safe-transit point for traffickers all over the world. Such a result is wholly unacceptable.

(3) It is clear, in the court's opinion, that such a construction placed on the Act does not contravene any rule of international comity.

(4) It is not disputed that in this case the presumption of knowledge of the nature of the drugs under s 18 of the Act applied and that the onus was on the appellant to rebut that presumption on a balance of probabilities. The court agreed with the trial court's finding that the appellant had failed to rebut this presumption.

Cases referred to

1 *Ong Ah Chuan* v *PP* [1981] 1 MLJ 64 (refd)
2 *Treacy* v *DPP* [1971] 1 All ER 110 (folld)
3 *R* v *Berry* [1984] 3 All ER 1008 (refd)

Legislation referred to

Misuse of Drugs Act (Cap 185, 1985 Ed) ss 2, 5(a), 18
Explosive Substances Act 1883 [UK] s 4(1)

Appeal from: Criminal Case No 29 of 1985 (High Court, Singapore)

Joseph Gay for the appellant.
Swaran Singh for the Public Prosecutor.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): This was an appeal by the appellant who was convicted by the High Court on 25 November 1987 on the following charge:

> You, Lau Chi Sing, are charged that you, on or about the 16th day of October 1984, at between 7.30pm and 7.55pm, in Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, (Cap 185, 1985 Ed) to wit, by transporting 242.85 gm of diamorphine from Ghim Peng Hotel, Geylang Road to Singapore Changi Airport in NTUC taxi no SH 8477M, without any authorization under the said Act or the regulations made thereunder, and you have thereby committed an offence under s 5(a) and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 1985 Ed).

The appellant, a Hong Kong national, had arrived in Singapore, from Kuala Lumpur, on 15 October 1984 and had checked into Ghim Peng Hotel at Geylang Road. At about 7.30pm on the same day, he checked out of the hotel and took a taxi to Changi Airport. There he checked in for his flight to Amsterdam after which he was arrested by a senior narcotics officer.

The appellant had with him a radio cassette player powered by ten batteries, eight bearing the brand 'Hi-Watt' and two bearing the brand 'National Hi-Top'. In addition, the appellant carried another three National Hi-Top and two Hi-Watt batteries in a bag. All 15 batteries were seized and sent to the Department of Scientific Services for examination. Eight Hi-Watt batteries were found to contain diamorphine totalling 242.85 gm, with a street value of about $290,000.

The above facts were not disputed. The appellant admitted having received the ten batteries found in the cassette player from a Thai male during his flight from Bangkok to Kuala Lumpur. It was also not disputed that the appellant had brought the batteries with him to Singapore and was going to bring them to Amsterdam to be delivered to some other person there, when he was arrested at Changi Airport. Neither was the fact that 242.85 gm of diamorphine were found in the eight Hi-Watt batteries ever challenged.

The appellant was charged and convicted of the offence of trafficking in a controlled drug under s 5(a) of the Misuse of Drugs Act, in that he had transported the drugs from Ghim Peng Hotel to Changi Airport without authorization. Section 2 of the Act defines 'traffic' as meaning:

> (a) to sell, give, administer, transport, send, deliver or distribute; or
> (b) to offer to do anything mentioned in paragraph (a),
>
> otherwise than under the authority of this Act or the regulations made thereunder; and 'trafficking' has a corresponding meaning.

Counsel for the appellant contended that under the Act, the offence of trafficking by transporting drugs was not made out unless the drugs were being transported with the intention or purpose of being delivered to some other person and such transfer of possession was intended to take place in Singapore. In other words, according to counsel for the appellant, the intended recipient of the drugs that were being transported must be in Singapore. In support of his contention, counsel referred us to the Privy Council decision in *Ong Ah Chuan* v *PP*.[1]

In *Ong Ah Chuan* v *PP*,[1] Lord Diplock who delivered the judgment of the Board, after a detailed analysis of the relevant provisions of the Act, summarized the position as follows:

> (1) the mere act of moving (controlled drugs) does not of itself amount to trafficking within the meaning of the definition in s 2; but if the purpose for which they were being moved was to transfer possession from the mover to some other person at their intended destination the mover is guilty of the offence of trafficking under s 3 (now s 5), whether that purpose was achieved or not ...
> (2) if the quantity of controlled drugs being moved was in excess of the minimum specified for that drug in s 15 (now s 17), that section creates a rebuttable presumption that such was the purpose for which they were being moved, and the onus lies upon the mover to satisfy the court, upon the balance of probabilities, that he had not intended to part with possession of the drugs to anyone else, but to retain them solely for his own consumption.

In our judgment the decision in *Ong Ah Chuan* v *PP*[1] does not support the proposition submitted by counsel. The Privy Council in that case had drawn a distinction between the transportation of drugs intended to be retained solely for the transporter's own consumption as contrasted with those intended to be delivered to someone else whether it be the actual consumer or a distributor or another dealer. It is only in the latter case that the offence of trafficking is committed. In making his submission that the delivery or transfer of possession of the drugs must also be intended to take place in Singapore, counsel for the appellant had, in our view, sought to impose an additional ingredient to the offence of trafficking, which is warranted neither by the Privy Council decision nor by the provisions of the Act. As the learned trial judges in this case had put it:

> ... so long as the drugs are transported for the purpose of distribution, it is immaterial whether the intended distribution takes place here or abroad. *We are not, in this case, concerned with the act of distribution but with the act of transporting for the purpose of distribution. The gravamen of the charge in this case is not the act of distributing the drugs but the act of transporting them for the purpose of distribution.* Adopting the words of Lord Diplock, if the purpose for which the drugs are being moved is to transfer possession from the mover to some other person known or in contemplation at the intended destination the mover is guilty of the offence of trafficking in drugs, irrespective of whether the purpose is achieved or not and – we would add – irrespective of whether the intended destination is here or abroad. Logically, it must follow that such a mover commits the offence immediately after he has begun his journey of moving the drugs, irrespective of whether he reaches his destination or not. Again, adopting the words of Lord Diplock, it is the act of transporting drugs for the purpose of distribution which is one of the evils against which s 5 with its draconian penalties is directed. (emphasis added)

In our opinion counsel for the appellant had misunderstood the Privy Council decision in *Ong Ah Chuan* v *PP*.[1] The reference to the purpose for which drugs are being transported was a commonsensible one and was made for the sole reason that otherwise the mere act of transporting drugs would amount to the offence of trafficking under the Act even though the drugs are intended for the transporter's own consumption. Such a result would be repugnant to the ordinary meaning of the word 'traffic' and to the structure of the Act which draws a distinction between the offence of possession and that of trafficking, the latter being punishable with far heavier penalties including, in certain cases, death.

Apart from authority, it is plain that the proposition submitted by counsel for the appellant could not have been intended by Parliament. To accept counsel's submission that one has not committed the offence of trafficking where one has transported drugs within Singapore merely because such drugs were transported with the intention of delivering them to someone else in some

other country, would be to declare Singapore as a safe transit-point for drug traffickers all over the world. Such a result is wholly unacceptable. We can see no difference between a person who has been caught transporting drugs and delivering the drugs to another in Singapore, and that other person who is then caught transporting the same drugs within Singapore but is found to be in possession for the sole purpose of bringing them out of Singapore to be delivered to someone in a foreign country. It seems to us absurd to suggest that in such a case the first transporter should be guilty of trafficking but the second not. Yet, this would be the conclusion if the submission by counsel for the appellant were accepted.

Counsel for the appellant further argued that since the offence of trafficking by transporting drugs requires the intention to transfer possession of the drugs to some other person, where the intended transfer is to take place outside Singapore the offence of trafficking under the Act would not have been committed as the Act is not extra-territorial. In our opinion this shows a lack of understanding of the offence as spelt out in the Act. The offence is completed once there is the act of transportation so long as the purpose of the transportation is to transfer possession to some other person in contradistinction to an intention to keep the drugs solely for one's own consumption. As stated, whether the transporter of the drugs achieves that purpose is irrelevant to his guilt of the offence of trafficking.

Furthermore, it is, in our opinion, clear that the construction we have placed on the Act does not contravene any rule of international comity. In *Treacy* v *DPP*,[2] the House of Lords had held that rules of international comity do not call for more than that each sovereign state should refrain from punishing persons for their conduct within the territory of another state where that conduct has had no harmful consequence within the territory of the state that imposes the punishment. Consequently, where the definition of an offence contains a requirement that the described conduct of the accused should be followed by described consequences it is sufficient to constitute the offence if either the conduct of the accused, or its consequences, take place in England. In the words of Lord Diplock (at p 121):

> There is no rule of comity to prevent Parliament from prohibiting under pain of punishment persons who are present in the UK ... from doing physical acts in England notwithstanding that the consequences of those acts take effect (or – we would add – are intended to take effect) outside the UK. Indeed, where the prohibited acts are of a kind calculated to cause harm to private individuals it would savour of chauvinism rather than comity to treat them as excusable merely on the ground that the victim was not in the UK itself but in some other state.

In *R* v *Berry*,[3] the House of Lords had to consider whether the offence of making explosive substances in such circumstances as to give rise to a reasonable suspicion that they were not made for a lawful object, under s 4(1) of the Explosive Substances Act 1883, was made out if the object of the manufacture was to use the explosives outside the UK. It was held that the offence was committed in such circumstances. Lord Roskill, with whom the rest of the House agreed, had this to say, at p 1012:

> (Section 4(1)) requires proof of two things, first, guilty conduct and, second, a guilty state of mind. To adopt the nomenclature borrowed from Scots criminal law by Lord Diplock in *Treacy* v *DPP* [1971] 1 All ER 110 at p 120, this offence is a 'conduct crime' not a 'result crime'. In the present case, the guilty conduct was shown by proof of the making of what was beyond peradventure an explosive substance within the definition. A guilty state of mind was shown by proof that that making was under such circumstances as to give rise to a reasonable suspicion that that making did not have a lawful object ... There is every reason for our law to object to (the manufacture of explosive substances) in this country for an object which is unlawful in the country to which it is destined...

In the same way, in our judgment, the offence of trafficking by transporting drugs in the present case would be committed once the physical act of transportation is shown to have been carried out with the purpose of delivering the drugs to someone else. That purpose need not be achieved nor need it be intended to take place within Singapore. It would not savour of comity to treat such transportation of drugs within Singapore as excusable merely because they are, so to speak, in transit, and are intended to be delivered to someone else in another country.

Finally, counsel for the appellant had also argued, without much conviction, that the learned trial judges had erred in not accepting the appellant's evidence that he had thought the batteries contained diamonds. The appellant's story had been that, throughout, he had been told, and he had believed, that he was smuggling diamonds instead of diamorphine. It is not disputed that in this case the presumption of knowledge of the nature of the drugs under s 18 of the Act applied and that the onus was on the appellant to rebut that presumption on a balance of probabilities. Having heard all the evidence and seen the appellant in the witness box, the learned trial judges found that the appellant had failed to rebut the presumption. The learned trial judges found the appellant's evidence incredible, a finding with which we agreed.

For the above reasons, we dismissed the appeal.

Appeal dismissed.

Solicitors: *Leong & Gay.*

Reported by *Ng Sheau Jiuan*

Ho Cheng Kwee v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) – CRIMINAL APPEAL NO 4 OF 1987
WEE CHONG JIN CJ, SINNATHURAY AND CHUA JJ
10 NOVEMBER 1988

Criminal Law – Dangerous drugs – Trafficking in – Appellant recanted version given to investigating officer that he was conveying drugs to third party – Defence given at trial was that drugs were entirely for his own consumption – Rejection of defence by trial judges – Whether trial judges correct in so doing

The appellant was convicted by the High Court on a drug trafficking charge under the Misuse of Drugs Act (Cap 185, 1985 Ed). He appealed to the Court of Criminal Appeal against his conviction and sentence.

During police investigations, the appellant admitted that the two packets of diamorphine (weighing 144.52 gm) found in his trousers were meant for delivery to a third party and that he was to be paid a sum of money for conveying the drugs. However, during the trial, the appellant recanted the version given to the investigating officer as regards the purpose of the diamorphine and said instead that the two packets were meant entirely for his own consumption. At the appeal hearing the sole issue was whether the trial judges were correct in rejecting the appellant's defence that he was a drug addict and that the two packets of diamorphine were entirely for his own consumption.

Held, dismissing the appeal: The presumption of trafficking under s 17(c) of the Misuse of Drugs Act (Cap 185, 1985 Ed) is a statutory and rebuttable presumption. The trial judges were right in rejecting the appellant's defence that the contents of the two packets of diamorphine were entirely for his own consumption. The court agreed with the trial judges that the quantity of diamorphine found on the appellant was too large for his own consumption.

Case referred to
1 *Ong Ah Chuan* v *PP* [1981] 1 MLJ 64 (refd)

Legislation referred to
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 5(a), 17(c)

Loh Lin Kok for the appellant.
Lee Seng Lip for the Public Prosecutor.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): The appellant, Ho Cheng Kwee, was charged before, tried and convicted by the High Court on 1 to 2 April 1987 on the following charge :

> You, Ho Cheng Kwee, are charged that you, on or about 15 October 1985 at about 8.40 am at Woodlands Customs Checkpoint, Singapore, not being authorized by the Misuse of Drugs Act (Cap 185, 1985 Ed) or any regulations made thereunder to import a controlled drug, did traffic, to wit 144.52 gm of diamorphine, which is a controlled class A drug as specified in Part I of the First Schedule to the aforesaid Act, and you have thereby committed an offence under s 5(a) and punishable under s 33 of the said Act.

The appellant appealed to this court against the conviction and sentence. At the conclusion of the hearing, we dismissed his appeal. We now give our reasons.

The facts as adduced by the prosecution are not in dispute. In 1985 and before his arrest on 15 October 1985, the appellant was working as a tour guide and was operating mainly in Haadyai, South Thailand. From time to time he returned to Singapore by bus.

On 14 October 1985, the appellant left Haadyai by bus. At the Woodlands checkpoint, in the course of customs clearance, the appellant was singled out for a body search. Two packets of white powdery substance wrapped in plain white paper were found in the two back pockets of his trousers. When he was questioned as to the contents of the packets, he replied in Hokkien that they were 'peh hoon' (a term in the Hokkien dialect for heroin). He admitted that the two packets belonged to him. In addition, a packet of 'Krong Thip' cigarettes was found in his shirt pocket. Four out of the 13 sticks of cigarettes were found to be spiked with a white powdery substance.

The appellant was arrested and the exhibits seized. He was referred to the investigating officer, Assistant Superintendent of Customs (ASC) Long Foo Liew. ASC Long's evidence was that when he questioned the appellant, the latter's reply was that the two packets contained 'peh hoon' and explained that by 'peh hoon' he meant that the contents were 'tok pin' (a term in the Hokkien dialect for controlled drugs).

The appellant went on to say that the two packets were handed to him on 13 September 1985 by an unknown Thai national at a coffee-shop in Haadyai. He had agreed with a person named Hay Yee to collect the drug in Haadyai and to deliver it to Hay Yee at the Redhill hawker centre for a fee of $1,000. As each packet weighed about 100 gm, ASC Long asked the appellant whether he knew the consequences of bringing into Singapore such a large quantity of controlled drugs. The appellant replied 'see' in the Hokkien dialect which translated means 'death'. As for the spiked cigarettes, the appellant said that they were for his own consumption.

As the appellant indicated that he was to meet Hay Yee at the Redhill hawker centre at about 1 pm on the same day, ASC Long led a party of customs officers together with the appellant to the hawker centre. However, no contact was made. Later the same evening, the appellant voluntarily made a cautioned statement to ASC Long. In his statement, he repeated what he had earlier told ASC Long.

According to the undisputed analysis carried out by Dr Chow Shui Tse, a senior scientific officer, the two packets seized from the appellant contained not less than 144.52 gm net of diamorphine. In his opinion, the gross contents of the two packets totalling 192.68 gm could be converted into heroin no 3 with a 'street' value of about $192,000.